SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 227

UNITED MINE WORKERS OF AMERICA, ET AL.,
Petitioners,

v.

ARKANSAS OAK FLOORING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

CRAMPTON HARRIS,
1018-19 First National Building,
Birmingham 3, Alabama;

JAMES I. McCAIN,
818 Whitney Building,
New Orleans, Louisiana;

YELVERTON COWHERD,
900 Fifteenth Street, N. W.,
Washington 5, D. C.;

ALFRED D. TREHERNE,
900 Fifteenth Street, N. W.,
Washington 5, D. C.,
Counsel for Petitioners.

Montgomery & Co., "The Brief Specialists", 330 Chartres St., N. O., La.

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No. _____

UNITED MINE WORKERS OF AMERICA, ET AL.,
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v.

ARKANSAS OAK FLOORING COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

To the Honorables, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

United Mine Workers of America, James L. Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, the petitioners herein, pray that a writ of certiorari be issued to review the final judgment and decree of the Supreme Court of the State of Louisiana entered in consolidated cases Nos. 41,797 and 41,983 in that court, entitled Arkansas Oak Flooring Company versus United Mine Workers of America, et als., affirming the judg-

ments and decrees of the Ninth Judicial District Court for the Parish of Rapides, State of Louisiana, temporarily and permanently enjoining the peaceful picketing of respondent's place of business.

OPINIONS BELOW.

The opinions below have not yet been published in any official or unofficial report. The two opinions of the District Court appear at page 87 of Record No. 41,797 and page 9 of Record No. 41,983 and pages 41 and 44 of Appendix A. The opinion of the Supreme Court of Louisiana appears in Appendix A, page 19, and page 1, Proceedings, Supreme Court of Louisiana and *per curiam* denial of rehearing appears in Appendix A, page 41, and page 25, Proceedings, Supreme Court of Louisiana.

JURISDICTION.

The opinion, judgment and decree of the Supreme Court of Louisiana was rendered and entered on April 25, 1955. Appendix A, page 19.

Timely application for rehearing was denied on May 31, 1955. Appendix A, page 41.

The jurisdiction of this court is invoked under Title 28, United States Code, Section 1257(3), which provides in part:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * *

"By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, * * * or statutes of * * * the United States."

The following cases are believed to sustain the jurisdiction of this court:

American Federation of Labor v. Swing, 312 U. S. 321;

Bakery & Pastry Drivers & Helpers Local 802, etc., v. Wohl, 315 U. S. 769;

Cafeteria Employees Union, Local 302 v. Angelos, 320 U. S. 293;

Garner v. Teamsters Union, 346 U. S. 485;

Weber v. Anheuser-Busch, Inc., 75 S. Ct. 480.

The Supreme Court of the State of Louisiana is the highest court of the State.

QUESTIONS PRESENTED FOR REVIEW.

1. Do Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act protect the rights of employees engaged in interstate commerce to designate as representative of their own choosing for the purposes of collective bargaining, a labor union which has not complied with Section 9 (f) (g) and (h) of the Act?

2. (a) Is picketing to obtain recognition of a majority designated union representative, which has not complied with Section 9 (f) (g) and (h) of the Labor Management Relations Act, picketing for an unlawful purpose which may be enjoined for that reason by a State Court?

(b) Is it not picketing protected by Amendments I and XIV of the United States Constitution and Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act?

3. Where an employer engaged in interstate commerce files in a State Court a petition for an injunction against some of his employees and a labor union, which petition alleges:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees, as expressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as a representative of its employees in the absence of their selection of said union as their representative,"

does it not charge an unfair labor practice under Section 8 (a) (3) and Section 8 (b) (2) of the Labor Management Relations Act and thereby preclude State jurisdiction?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The Constitutional provision involved is the First Amendment, which, in part, provides:

> "Congress shall make no law * * * abridging the freedom of speech * * *." (Excerpt)
>
> *United States Constitution, Amendment I.*

This is made applicable to the states by the Fourteenth Amendment which, in part, provides:

"* * * nor shall any state deprive any person of life, liberty, or property, without due process of law." (Excerpt)

United States Constitution, Amendment XIV.

The sections of the Labor Management Relations Act of 1947 which are involved are: 1, 7, 8 (a) (3), (a) (5), (b) (2), 9 (f) (g) (h) and 13. These sections of the Act are set out *verbatim* in Appendix B, pages 46 to 52.

STATEMENT OF THE CASE.

Arkansas Oak Flooring Company, a Delaware Corporation, (p. 3, R. 41,797) maintained an oak flooring manufacturing plant at Alexandria, Louisiana and was admittedly engaged in interstate commerce (p. 105, R. 41,797). At least 90 per cent of the products manufactured in Louisiana were sold and delivered out of Louisiana (p. 125, R. 41,797).

On March 12, 1954, the Alexandria plant had been without a union for four years (p. 125, R. 41,797). During October or November, 1953, James L. Ledbetter, a representative of District 50 of the United Mine Workers of America, contacted the mill employees for the purpose of organization (p. 129, R. 41,797).

As a result, a union was set up by the mill employees by their voluntary association about December 1, 1953 (p. 133, R. 41,797).

By February 23, 1954, a total of 174 of the plant employees had signed membership applications with District 50, United Mine Workers of America and had designated this union as its bargaining agent with the employer. (See photostatic copies of such applications (pp. 26-85, R. 41,797)). At that time there were 225 mill or plant employees. (P. 119, R. 41,797).

On February 24, 1954, Mr. Ledbetter identified himself to Mr. Fowler, Assistant Manager of the mill, and showed his union credentials and stated that District 50 represented a majority of the mill employees and made a formal demand for recognition of District 50 as the bargaining representative of the plant employees (Pp. 136, 95, 142, R. 41797). Mr. Fowler informed Mr. Ledbetter that his union was not recognized by the Labor Board and that he could not recognize it either.

On March 1, 1954, the union membership set up a picket line to obtain union recognition. The picketing at all times was on the public streets (p. 138, R. 41,797) and consisted of only three men. Only two signs were carried by the pickets. One sign stated "This plant is on strike;" the other, "We want recognition, District 50 UWA," (p. 108, R. 41,797).

The picketing was only at the employer's plant (p. 138, R. 41,797). There was not a single incident of any violence, threats or intimidation (p. 138, R. 41,797).

The picketing continued peacefully until the late afternoon of Tuesday, March 2, 1954, when the restraining orders were served on the defendants and the picketing ceased.

On March 15, 1954, Judge Allen V. Hundley issued a preliminary injunction, without reasons, against all defendants restraining them from "picketing on, near or about the plaintiff's property or approaches thereto, just off Texas Avenue, in the city of Alexandria."

This judgment was signed on March 25, 1954, Appendix A, p. 42, and on the same date all defendants took a devolutive appeal to the Supreme Court of Louisiana, docketed under Number 41,797.

On June 24, 1954 a permanent injunction identical with that rendered on the preliminary hearing; was rendered and signed (p. 9, R. 41,983). Appendix A, p. 44. The defendants took a devolutive appeal to the Supreme Court of Louisiana on the same day docketed under Number 41,983 (p. 10, R. 41,983).

The Supreme Court of Louisiana entered an order for consolidating the two appeals for presentment and argument. Appendix A, p. 45, and page 24, Proceedings, Supreme Court of Louisiana.

FEDERAL QUESTIONS IN THE COURTS BELOW.

A. In the Trial Court.

The third question for review, *supra*, was the first federal question in the courts below.

Paragraph 10 of the petition for injunction reads:

> "Petitioner shows that the picketing presently engaged in by the defendant union has for its unlawful purpose the forcing of petitioner to interfere with the rights of its employees, as ex-

pressed by the legislature of Louisiana, by requiring petitioner to deal with the defendant union as representative of its employees in the absence of their selection of said union as their representative."

On March 12, 1954 the defendants filed an exception to the jurisdiction *ratione materiae* (pp. 4 and 5, R. 41,797) reading:

"2. That the petition alleges an unfair labor practice growing out of a labor dispute in the field of interstate commerce, which is in the exclusive jurisdiction of the National Labor Relations Board as provided by the Labor Management Relations Act, Section 160 (a)." (P. 14, R. 41,797).

On the same day, the defendants filed their Return to the Rule (p. 18, R. 41,797) to show cause why a temporary injunction should not be granted. Paragraph 16 of said Return (p. 20, R. 41,797) reads as follows:

"Defendants further aver also or in the alternative, that this matter involves an unfair labor practice, growing out of a labor dispute in the field of interstate commerce and within the exclusive jurisdiction of the National Labor Relations Board."

On March 15, 1954, the Trial Court entered this order:

"This cause coming over from Friday, March 12, 1954 was called. Testimony and evidence adduced. Exceptions to the jurisdiction and

vagueness argued, submitted and overruled by the Court. Rule taken up and tried. Testimony and evidence adduced. Rule argued; submitted and judgment rendered making the rule absolute as prayed for." (P. 2, R. 41,797).

Formal judgment on the preliminary injunction, adverse to these defendants, was read and signed in open court on March 25, 1954, and is set out *verbatim* in Appendix A, p. 42.

The defendants reasserted this same federal question on their formal answer to the prayer for a permanent injunction. This appears on Page 6, R. 41,983, Paragraph 16.

Judgment adverse to these defendants on the permanent injunction appears on Page 9, R. 41,983 and is set out in Appendix A, p. 44.

The second question for review, *supra*, originates in Paragraph 8 of the petition (p. 4, R. 41,797) of the Arkansas Oak Flooring Company, which reads:

"In the alternative, and should it be found that petitioner is engaged in a labor dispute with the defendant union, which is denied, then it would be unable to recognize it as a bargaining agent of its employees because the National Labor Relations Board has refused to recognize said defendant union as a qualified labor organization because of the failure of its officers to disavow Communist affiliation, as required by the National Labor Relations Act, that picketing, peaceful or otherwise, by such

non-complying union, is an unlawful interference with petitioner's business."

The defendants, in Paragraph 17 of their Return to Rule, (p. 20, R. 41,797) pointed the question with these words:

> "Defendants aver that the right to strike and picket peacefully, as conducted herein by defendants and other employees of the petitioner, (as an expression of free discussion) is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana."

In the identical language just quoted, the defendants raised this question again in Paragraph 17 of their formal answer to the petition and prayer seeking a permanent injunction (p. 6, R. 41,983).

The first question presented for review, *supra*, arises from the averments of Paragraph 17 of the formal answer to the petition for an injunction, which reads as follows:

> "Defendants aver that the right to picket peacefully, as conducted herein by defendants and other employees of the petitioner), is protected by the First and Fourteenth Amendments to the Constitution of the United States and Article I, Section 3 of the Constitution of Louisiana.
>
> "And defendants also aver that this right to peacefully picket being concerted action by employees involving their employer engaged in inter-

state commerce, is action protected by the National Labor Relations Act enacted under the Commerce Clause of the United States Constitution and is, therefore, beyond State regulation or restraint."

The adverse rulings of the Trial Court on this question appear on Page 9, R. 41;983 and is set out in Appendix A, p. 44.

B. **In the Supreme Court of Louisiana.**

The defendants continued to press the federal questions on appeal, not by formal assignment of error, a method not used in civil appeals in Louisiana but by brief and oral argument before the Louisiana Supreme Court. Witness the following language in the opinion of that court:

"Counsel for defendants is contesting here, under specifications set out in brief, the correctness of the Trial Judge ruling with respect (1) to the citation of the Union in its association name and through Ledbetter; (2) the State's assumption of jurisdiction rationae materiae despite the fact the plaintiff is engaged in interstate commerce and an unfair labor practice is involved and (3) in any event, the right of a State Court under Louisiana law, to enjoin peaceful picketing of an employer's plant to secure recognition as the employee bargaining representative." Appendix A, page 22.

On the third question presented for review, *supra*, whether the petition alleged an unfair labor practice in in-

terstate commerce precluding state jurisdiction, the Supreme Court of Louisiana held as follows:

> "The second, and most important, error allegedly committed by the trial judge, that is, his failure to sustain the plea to the jurisdiction rationae materiae, is predicated upon the theory that this case involves an unfair labor practice in a dispute affecting interstate commerce and is, therefore, controlled by the landmark decision in Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, holding that such matters are within the exclusive jurisdiction of the National Labor Relations Board." Appendix A, page 24.

* * * * * *

> "* * * In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair labor practice by the amendment of 1947." Appendix A, p. 25.

On question 2 (a) presented for review, *supra*, whether peaceful picketing for recognition of the majority selected union representative was protected by the Labor Management Relations Act of 1947, the Supreme Court of Louisiana held as follows:

"It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9 (f) (g) and (h) of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. * * *" Appendix A, p. 34.

On question 2 (b) presented for review, *supra*, whether peaceful picketing for recognition of the majority selected union representative was protected by the First Amendment of the Federal Constitution, the Supreme Court of Louisiana held as follows:

"The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective." Appendix A, p. 36.

On the first question presented for review, *supra*, the right of the majority of the employees under Sections 1, 7, 8 (a) (5) and 13 of the Act to designate as representative of their own choosing for the purpose of collective bargaining, a labor union which has not complied with Sections 9 (f) (g) (h) of the Act, the adverse holding of the Supreme Court of Louisiana, is in these words:

> "The plaintiff's refusal to recognize the Union, was, therefore, not in violation of any obligation imposed by law." Appendix A, page 34.

On application for rehearing, the decision in *Weber, et al., v. Anheuser-Busch, Inc.*, handed down March 28, 1955, was called to the attention of the Supreme Court of Louisiana (R. 34). Rehearing was denied without mention of this decision (R. 25). Appendix A, page 41.

REASONS FOR GRANTING THE WRIT.

It is clear that the Supreme Court of Louisiana has decided federal questions. The decision construes and applies Section 9 (f) (g) and (h) of the Labor Management Relations Act of 1947 and the First and Fourteenth Amendments, United States Constitution.

The primary question in this case is whether the *right* of the majority of employees, engaged in interstate commerce, to select for purposes of collective bargaining, a representative of their own choosing, which *right* is recognized and protected by Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act of 1947, is limited and restricted to unions which have complied with Section 9 (f) (g) and (h) of the Act.

By holding that:

"Plaintiff's refusal to recognize the union was therefore, not in violation of any obligation imposed by law"

the Supreme Court of Louisiana has necessarily limited and restricted the freedom of choice of the majority of the employees. If the employees have freedom of choice, the employer has the duty to recognize. The right of choice is in the employees; not the employer.

Then by holding that peaceful picketing to obtain recognition of a non-complying union is picketing for an unlawful purpose, the Supreme Court of Louisiana has limited and restricted the right of selection to complying unions. This court has never passed upon either of these questions.

The instant decision is of great importance because, if allowed to stand, it will be a precedent affecting thousands of members of the United Mine Workers of America and thousands of members of other unions who also use the self-help method of peaceful picketing and do not use the slower machinery of the National Labor Relations Board. The doctrine announced by this decision imperils all bargaining contracts now in existence between interstate employers and non-complying unions, and all their future contracts.

The instant decision qualifies the right of freedom of choice protected by Sections 1, 7, 8 (a) (5) and 13 of the Labor Management Relations Act of 1947 and is contrary to the principles enunciated by this court in *Weber v. Anheuser-Busch, Inc.*, 75 S. Ct. Rep. 480, ___ L. Ed. ___.

The Louisiana court has assumed jurisdiction to fix and pass upon the qualifications of a labor representative for employees in interstate commerce and is, therefore, in violation of the principles of two United States Supreme Court decisions, to-wit: *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18 and *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767..

The instant decision is in direct conflict with the decisions of United States Courts of Appeals in *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 1st Cir. (1953) and *National Labor Relations Board v. Pecheur Lozenge Co.*, 209 F. (2d) 393, 2nd Cir. (1953), which hold that compliance with the requirements of Section 9 (f) (g) and (h) is not a condition precedent to the obligation of an employer to bargain collectively with the chosen representative of the employees, and is contrary to *National Labor Relations Board v. International Rice Milling Co.*, 341 U. S. 665, holding that the primary strike for recognition without certification is not proscribed.

In the instant case the majority representation is beyond question, being 174 out of 225 employees. The holding of the court that the union, "cannot compel the employer to recognize it as representative of its employees" is contrary to the principles followed in three opinions of United States Courts of Appeals, to-wit: *National Labor Relations Board v. Kobritz*, 193 F. (2d) 8 (14) 1st Cir., 1951; *Iob v. Los Angeles Brewing Co.*, 183 F. (2d) 398, 404; and *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70 (3rd Cir., 1954).

The opinion of the Supreme Court of Louisiana, in holding that non-complying unions in interstate commerce cannot peacefully picket for recognition has reached a decision contrary to that reached by the Supreme Courts of Tennessee, Minnesota and California. See *Lodge Mfg. Co. v. Gilbert, et al.*, 260 S. W. (2d) 154; *Faribault Daily News v. International Typographical Union*, 53 N. W. (2d) 36; *Gerry of California v. Superior Court*, 194 P. (2d) 689.

The Louisiana court has unduly restricted the right of peaceful picketing allowed under the First Amendment of the United States Constitution. It seems to us to depart from the principles of the following cases on peaceful picketing decided by this court, to-wit: *Thornhill v. Alabama*, 310 U. S. 88; *Carlson v. California*, 310 U. S. 106; *A. F. of L. v. Swing*, 312 U. S. 321; *Bakery Drivers v. Wohl*, 315 U. S. 769 and *Cafeteria Employees Union v. Angelos*, 320 U. S. 293.

The evidence showing engagement in interstate commerce, Paragraph 10 of the petition, charges an unfair labor practice under the Act and state court jurisdiction is thereby precluded. Furthermore, the facts show majority representation and peaceful picketing and give protection under Sections 1, 7, 8 (a) (5) and 13 of the Act which deprives the state court of the power to enjoin, as we read the Weber decision.

Finally, the Act contemplates the existence of non-complying unions and provides the limited punishment of exclusion. The opinion below increases the punishment for non-compliance to a death sentence. It amounts to

judicial amendment to an Act of Congress. Confusion and uncertainty in the interpretation and administration of the Labor Management Relations Act of 1947 will be an inevitable consequence.

CONCLUSION.

For the foregoing reasons we respectfully submit this petition for writ of certiorari should be granted.

CRAMPTON HARRIS,
1018-19 First National Building,
Birmingham 3, Alabama;
JAMES I. McCAIN,
818 Whitney Building,
New Orleans, Louisiana;
YELVERTON COWHERD,
900 Fifteenth Street, N. W.,
Washington 5, D. C.;
ALFRED D. TREHERNE,
900 Fifteenth Street, N. W.,
Washington 5, D. C.,
Counsel for Petitioners.

APPENDIX "A"

Original Majority Opinion Judgment and Decree of the Supreme Court of Louisiana

Arkansas Oak Flooring Company

v.

United Mine Workers of America, et al.

Nos. 41,797 and 41,983

Supreme Court of Louisiana

APPEAL FROM THE NINTH JUDICIAL DISTRICT PARISH OF RAPIDES

HON. ALLEN V. HUNDLEY, JUDGE

FOURNET, CHIEF JUSTICE.

The United Mine Workers of America, District 50, and twelve other named defendants[1] are appealing devolutively from the judgments of the lower court granting to the plaintiff, Arkansas Oak Flooring Company, a preliminary and permanent injunction[2] restraining them "and any and all other persons acting for or on" their behalf "from picketing on, near or about plaintiff's property * * * just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana."

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1. James L. Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins.

2. No. 41,797 on the docket of the court is the appeal taken from the judgment granting the preliminary injunction, and No. 41,983 is the appeal taken from the judgment granting the permanent injunction.

The facts pertinent to a decision of the issues raised in this case are, substantially, that the Arkansas Oak Flooring Company (admittedly engaged in interstate commerce), with principal offices in Pine Bluff, Arkansas, operates a sawmill and flooring plant near the City of Alexandria, Louisiana, where it is engaged in the business of manufacturing lumber and oak flooring. The employees in this plant had been unorganized for a period of some four years and there was no dispute between the employer and employees with respect to working conditions, wages, or hours, when, in October or November of 1953, James L. Ledbetter, claiming to represent the United Mine Workers of America, District 50,—a Union that has admittedly failed and refused to comply with the requirements of Section 9 (f) (g) and (h) of the Labor Management Relations Act of 1947[3] arrived in Alexandria for the exclusive purpose of contacting the plaintiff's employees, with the avowed intention of ultimately compelling recognition of this Union as the bargaining representative of such workers. Purportedly having authority from some 174 of the plaintiff's 225 employees, exclusive of officers, inspectors, and foremen, who had allegedly joined the Union, Ledbetter, on February 23, 1954, at a time when he knew that the plant manager was out of the state, presented his demand for recognition of the Union to the assistant manager, who advised Ledbetter that inasmuch as the Union was not recognized by the National

3. Section 9 (f) and (g) require that a Union seeking to be declared the bargaining agent of employees file with the Secretary of Labor certain information relative to its organizational and financial structure, and Section 9 (h) requires the filing of affidavits with the National Labor Relations Board in which the Union's officers deny membership in or affiliation with the Communist Party and deny belief in the overthrow of the United States Government by force.

Labor Relations Board, he would not recognize it, and further advised that if Ledbetter desired to negotiate further he would have to take the matter up with the company officials in Pine Bluff, where all matters of policy were handled. Instead, a strike was called to compel recognition of the Union on March 1, 1954, and the picket line thrown up in connection therewith caused a large number of plaintiff's employees to refuse to cross the line and report for work, with the result that the employer's operations were greatly curtailed and irreparable loss was sustained.

The company thereupon secured a temporary restraining order with a rule to show cause why a preliminary injunction should not issue, and ultimately, a permanent injunction be granted. On the return day, the Union excepted to its citation through Ledbetter, contending that as an unincorporated labor organization with no corporate existence in Louisiana it could not be impleaded into court under its group or company name; further, that the court had no jurisdiction rationae personae since Ledbetter was not authorized to receive process for the members of the group or to stand in judgment for the Union. On this same day, all defendants excepted to the petition on the ground of vagueness, and also to the Court's jurisdiction rationae materiae, the latter exception being predicated on the assertion that the National Labor Relations Board alone has jurisdiction to halt the peaceful picketing of an employer whose business is affected by interstate commerce. In answer, all defendants generally denied the allegations of the petition, reiterated the matters set out in the exception, and asserted, additionally, that the right to strike and to picket peacefully as an expres-

sion of free discussion is protected by the First and Fourteenth Amendment to the Constitution of the United States, and Section 3 of Article 1 of the Constitution of Louisiana.

The exceptions were overruled and the preliminary injunction granted, which, following trial on the merits, was made permanent. These appeals followed:

Counsel for the defendants is contesting here, under specifications of error set out in brief, the correctness of the trial judge ruling with respect (1) to the citation of the Union in its association name and through Ledbetter (2) the state's assumption of jurisdiction rationae materiae despite the fact the plaintiff is engaged in interstate commerce and an unfair labor practice is involved, and (3) in any event, the right of a state court, under Louisiana law, to enjoin peaceful picketing of an employer's plant to secure recognition as the employee bargaining representative.

The contention of the appellants that the court had no jurisdiction of the Union rationae personae since Ledbetter was without authority to receive process of citation for the group or to stand in judgment is based upon the generally recognized rule that obtains in the common law that in the absence of an enabling or permissive statute an unincorporated voluntary association is not capable of being sued in its common or association name. But this rule is untenable in Louisiana under the express provisions of the Revised Statutes in this state which provide that "any voluntary association may be sued on any obligation incurred for the benefit of such association, in the name of the said association and all legal services in such

matters shall be made upon the managing official of such voluntary association and in the absence of such official, then upon any other official, and in the absence of all officials then upon any member of such association."[4] The fact that Ledbetter was not authorized to accept citation in the instant case is, therefore, of no moment.

As pointed out in the recent case of Godchaux Sugars, Inc. v. Chaisson (No. 41,569 on the docket of the court, handed down January 10, 1955), "To hold that an unincorporated group must be individually named and cited before it is susceptible to restraint would be equivalent to holding that, by subterfuge of unincorporation, group action transcends individual rights and is unlimited and unrestrictable except within the purview of the criminal statute, or that corporations unauthorized by law cannot be restrained from doing irreparable injury except through the process of individual identification." The reason given therefor is that "time is of the essence in the nature of the relief prayed for in this case (and) to require the ascertainment of individual membership of an unincorporated association and thereafter individual citation as conditions precedent to the granting of relief—and thereby require plaintiffs to gather information almost exclusively within the knowledge of defendants, without whose help it would be impracticable or perhaps even impossible to gather, and from whom hindrance and obstruction, rather than cooperation, could be reasonably anticipated,—would be tantamount to a denial of relief.

4. Act 170 of 1918, which has been incorporated into the Revised Statutes of 1950 as Paragraph 22 of R. S. 13:3471.

The second, and most important, error allegedly committed by the trial judge, that is, his failure to sustain the plea to the jurisdiction rationae materiae, is predicated upon the theory that this case involves an unfair labor practice in a dispute affecting interstate commerce and is, therefore, controlled by the landmark decision in Garner v. Teamsters Union, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, holding that such matters are within the exclusive jurisdiction of the National Labor Relations Board.

In the Garner case the Supreme Court of the United States simply gave added emphasis to the well settled jurisprudence that congressional legislation curtails state action in the field intended to be covered and that state action is, within that particular sphere, superseded; consequently, that Congress, by the adoption of the National Labor Relations Act of 1935 (referred to as the Wagner Act), and its amendment in 1947 by the Labor Management Relations Act (known as the Taft-Hartley law), did, with relation to the rights there conferred, place within the jurisdiction of the National Labor Relations Board the enforcement of the rights and privileges there delineated, which enforcement was to be carried out through the administrative scheme therein devised, as supplemented by the judicial remedies prescribed. The court was careful to point out, however, that the Act "leaves much to the states, though Congress has refrained from telling us how much," leaving to the judiciary to "spell out from conflicting indications of congressional will the area in which state action is still permissible," and that the Board has no jurisdiction in those zones that are either "governable by the State or * * * entirely ungoverned." As to these spheres, the court has declined to find an implied exclusion

of state power and, instead, permits the states to exercise their "historic powers over such traditionally local matters" as injurious conduct which the Board is without express power to prevent, public safety and order and the use of streets and highways, as well as in those cases where the Board "would decline to exercise its powers once its jurisdiction was invoked."

However, the labor activity sought to be restrained in the Garner case was peaceful stranger picketing for the purpose of coercing the employer to compel his employees to join a union—an activity, as demonstrated in the opinion, specifically denounced as an unfair labor practice in the Act. In the instant case the picketing was engaged in for the sole purpose of compelling the employer to recognize as the legally constituted agent of its employees a union that has no legal status before the National Labor Relations Board because of its failure and refusal to comply with the provisions of the Act requiring the filing of certain information relative to structural and financial matters, as well as non-communist oaths. This is clearly not an act denounced as an unfair-labor practice by the amendment of 1947.

Congress, in order to promote the peaceful settlement of labor disputes, in so far as they obstruct the free flow of commerce through strikes and other forms of industrial unrest, adopted the Act of 1935 and, in 1947, in order to adjust and minimize any differences in the rights granted to unions, employees, and or employers, amended that act by the adoption of the Labor Management Relations Act.

In Section 9 of this amendment, Congress has, in no uncertain terms, specifically devised the formal mode for the selection and rejection of agents or representatives. Paragraph (a) of the section provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment." Under this same section, an employer, if in doubt as to the majority claimed by a unit, can petition the Board for certification of the legally constituted representative, whether one or more unions claim to be the bargaining agent of the employees as defined in Section 9 (a) [Section 9 (c) (1) (B)], *and this certification can only be granted following an election by secret ballot conducted by the Board in accordance with its rules as promulgated in conformity with the provisions set out in the Act.* Section 9 (c) (1). The Board is, therefore, the only administrative agency with authority to certify the proper bargaining agent in a business affected by interstate commerce. It, additionally, the only agency that has the machinery for conducting the elections that determine that question.

Newman, in his work on "The Law of Labor Relations," gives us the following excellent analysis of the historical background of these provisions, as well as their effect:

"The problem of whether a union is the proper bargaining representative of the group of employees for whom the union purports to speak arises when the union

asserts that it constitutes the representative body with which the employer is obliged to bargain. If it is, it may bargain for the entire group, by virtue of the cardinal principle that the representatives selected by the majority of the employees shall be the exclusive representatives of all the employees. Under the Wagner Act of 1935 there was no way for the employer to test the validity of the union's claim by obtaining a ruling of the Board on the authenticity of the signature cards, possible withdrawals of authorization for the union to represent the individual employees, or the absence of coercion by the union organizers against the employees to induce them to sign the authorization. There was no provision for a certification by the Board of the bargaining representative at the request of the employer, although a union might obtain such certification on its request. Under the Wagner Act the employer had to decide for himself, therefore, the difficult questions of fact as to the validity of the proof that the union really was the choice of a majority of the employees * * *. The employer therefore faced the dilemma of refusing to recognize and bargain with the union at the peril that the unit might later be found by the Board to be the proper representative of the employee group, or of dealing with the union at the hazard of finding that a different representative was entitled to recognition. This hardship on the employer was so evident that after a few years of operation under the Wagner Act the Board promulgated an administrative ruling to the effect that where two groups asserted the right to represent the employees, the employer might demand an election under the direction of the Board before he was obliged to recognize either group. *There was still no relief when only a single*

group demanded recognition. This evil has now been fully corrected in the Act of 1947, where by the provisions of Section 9 (c) (1) (B) *the employer may petition for an election where any claim for representation is made upon him. The employer is therefore relieved from the hazard of recognizing an uncertified union which is not in fact entitled to recognition*, and from the hazard of denying recognition to an uncertified union which actually is validly authorized to represent an appropriate union * * *," Pages 13 and 14 (Emphasis supplied).

However, in Section 9 Congress also preclude investigation by the Board of any question concerning the representation of employees raised by a labor organization, as well as the issuance of any complaint with respect to an unfair labor practice at the behest of a labor organization until that organization had complied with the provisions of subsection (f) with respect to the filing of detailed information relative to the Union's organizational structure. Additionally, and in furtherance of "its policy of wholly eradicating and barring from leadership in the American labor movement, at each and every level, adherents to the Communist party and believers in the unconstitutional overthrow of our Government"[5] Congress adopted Section 9 (h) which provides that *"No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under Subsection (c) of this Section,*[6],

5. NLRB v. Happ Bros. Co., 196 F. (2d) 195. See, also, American Communication Assn. v. Douds, 339 U. S. 382, 94 L. Ed. 925 and particularly the concurring opinion of Justice Jackson at 94 L. Ed. 956.

6. Authorizing the Board to investigate a question of representation upon the petition of the employer, employee, or labor organization, as above described in the petition.

* * * and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10,[7] *unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by an illegal or unconstitutional methods.*" (Emphasis supplied).

Accordingly, there is, in the record, a letter addressed to the attorneys representing the plaintiff by the regional director of the National Labor Relations Board in which it is stated: "This is to advise that the United Mine Workers of America has not complied with the filing requirements of Section 9 (f) (g) and (h) of the Act and therefore may not use the services of the Board for either representation or unfair labor practice matters."

Counsel for the defendants conceded during the trial that this Union is non-complying, but argues in brief that "the significance of this means only that the defendant Union cannot use the facilities of the Labor Board to the extent that such are available to complying unions" contending, very ingenously, that such non-compliance does not render the union an "outlaw," but simply strips it of its right to appeal to the Board for the settlement of mat-

7. Authorizing the investigation through the procedure set out in Section 10 (b) the unfair labor practices as listed in Section 8.

ters of representation and unfair labor practices. He insists, therefore, that inasmuch as the employer is not denied the facilities of the Board, it has a duty to negotiate with the union chosen by the majority of its employees and to itself invoke the facilities of the board for the settlement of any grievances it may have with respect thereto.

Counsel is in error in his appreciation of the significance of these provisions. Shortly after the passage of the 1947 amendment to the Act, in the matter of Herman Loewenstein, Inc., 75 N.L.R.B. 377, the National Labor Relations Board had occasion to consider and interpret the provisions of Section 9 (f) (g) and (h) and it there laid down a policy from which it has never since deviated. Although in that case the matter had been brought to the Board by the employer, the Board, in refusing to take jurisdiction, said:

"*We construe the amended Act to provide, in essence, that a non-complying labor organization shall not be the beneficiary of any Board investigation of a question concerning representation.* For this reason the Board has declined to proceed to hearing or election on a petition filed by a non-complying union; it has declined to certify such a union since the effective date of the amendments to the Act, even though it won a victory at the polls before that date; it has declined to place such a union on the ballot, as intervenor, in an election held at the instance of a petitioning labor organization that has complied with Sections 9 (f) and (h), even though its intervention at the hearing was otherwise proper; and *it has declined to order an employer to bargain collectively with a noncomplying*

union, except upon compliance by the union within a specified period.

"Here the petitioner is not a complying labor organization, but the employer. The fact remains that the question concerning representation, although brought to the Board's attention by the employer's own petition, was 'raised by a labor organization.' It was raised by the affirmative claim, here made both by the Fur Workers, CIO and by the Adironcack Workers, that a labor organization represented a majority of the employer's employees within an appropriate unit. * * * *Although it is the employer's petition in such a case that sets the Board's machinery in motion, it is an individual's or a labor organization's initial claim for recognition that makes it possible for the employer to invoke that machinery.* If, as here, a labor organization that presented a claim for recognition has not complied with the provisions of Section 9 (f) and (h), we would no more implement the policy of Congress if we placed it on the ballot than if we were to do so in a case in which it, or another labor organization, filed the formal papers with the Board. *If a non-complying union were placed on the ballot and happened to win the election, no one could expect the Board under the amended Act to issue a certification that would run in its favor.* But a victory at the polls, even without later formal certification, would confer certain moral and practical advantages on the non-complying union which the basic policy of Congress appears to discountenance. Such a result can be averted with certainty only by our declining to place a non-complying union on any ballot, unless there are absolutely compelling statutory or policy reasons for doing so.

"In our opinion, *the fact that a petition has been filed by an employer rather than by a labor organization does not provide such compelling reasons.* The question concerning representation remains a question 'raised by a labor organization' which has made a claim for recognition as bargaining representative. An employer petition, like a union petition, seeks to resolve the question of who, if anyone, is the true bargaining representative of the employees. Either sets in motion the same investigative process; the same result, either of certification or of dismissal, may flow from either; and a Board election conducted on the basis of either will now preclude another Board election for 12 months. This similarity between employer and union petitions, both in purpose and in result, points strongly to the conclusion that a non-complying union should derive no more advantage from the one than it does from the other. The statutory language supports the same conclusion. Sections 9 (f) and (h) speaks in terms of questions raised, rather than of petitions filed, by labor organizations. An employer petition must allege that he has been presented with a claim by an individual or a labor organization for recognition as bargaining representative of his employees. The distinction which Congress intended to draw by the words 'raised by a labor organization' is, we believe, between a claim for recognition made by a union and a similar claim by an individual or individuals, not between a union petition and an employer petition filed with the Board. * * *

"* * * *We believe* * * * *that the exclusion of non-complying unions from the ballot in cases where employers are the petitioners is more nearly consistent with the supervening policy of denying the imprimatur of Gov-*

ernment to such labor organization." To this same effect are the later decisions in Staten Island Cleaners, Inc., 93 NLRB 63; and the Federal Refractories Corp., 100 NLRB 35." (All emphasis has been supplied).

The Act permits individual employees, as well as the employer, to petition the Board with respect to questions concerning representation and unfair labor practices, but the United States Court of Appeal for the Fifth Circuit, in N.L.R.B. v. Happ Brothers Co., 196 F. 2d 195, held it would not permit individual employees, bringing charges of unfair labor practices against an employer, to thus "front" for a non-complying union that was without access to the Board's facilities. It accordingly refused to enforce the Board's directive to the employer, brought at the instance of an employee, ordering it to cease and desist from the unfair labor practices there charged, stating it would not thus permit the great purpose of the amendment requiring the filing of non-communist oaths to be "rendered nugatory and destroyed" by the subterfuge of or resort to the simple expedient of employing an individual to "front" for non-complying unions.[8]

In Labor Board v. Highland Park Mfg. Co., 341 U. S. 322, 95 L. Ed. 969, the Supreme Court of the United States, holding that the Board was without authority to order an employer to bargain with a local union whose affiliate or parent union had not filed the requisite non-communist affidavits provided for in the Act, said: "*The Board is a statutory agency and, when it is forbidden to*

8. The picketing in the instant case is tantamount to organized activity engaged in for the purpose of compelling the employer to "front" for the Union in a representation matter before the Board.

investigate or entertain complaints in certain circumstances, its final order could hardly be valid." See, additionally, the annotations at 95 L. Ed. 979 and 97 L. Ed. 415. (Emphasis supplied).

It necessarily follows that inasmuch as the Union in the instant case has, by its own admission and as certified to by the National Labor Relations Board, failed and refused to comply with the provisions of Sections 9 (f) (g) and (h) of the 1947 amendment, the Board is without jurisdiction to entertain any question with respect to its protestations of majority representation and/or unfair labor practices, for it is not only ineligible for certification, but cannot compel the employer to recognize it as the representative of its employees. The plaintiff's refusal to recognize the Union was, therefore, not in violation of any obligation imposed by law, and the picketing in furtherance of this unlawful objective was the employment of economic pressure illegally for the purpose of causing the employer irreparable injury for which it has no adequate administrative or legal remedy—injurious conduct which the state has jurisdiction to relieve. See Stewart-Warner Corp. v. National Labor Relations Board, 194 F. 2d 207[9]

9. In this case officials of a non-complying union, acting in their individual capacities, sought to charge the employer with an unfair labor practice because of the employer's refusal to permit the circulation of petitions on its property in connection with an attempt to organize the employees. In concluding such conduct did not constitute an unfair labor practice by the employer the United States Court of Appeal for the Fourth Circuit said: "There is nothing in the Labor Management Relations Act which requires an employer to permit his premises to be used by employees for activities in contravention of the spirit and purpose of the act. The company was under no obligation to recognize or deal with the [non-complying Union] even it had obtained a majority, and, a fortiori, was under no obligation to permit adherents of the [Union] to use its premises * * * in carrying on a campaign in behalf of the [Union]." (Brackets added).

Goodwins, Inc. v. Hagedorn, 303 N. Y. 300, 101 N. E. 2d 697; Fulford v. Smith Cabinet Mfg. Co., 118 Ind. App. 326, 77 N. E. 2d 755; Cordey China Co. v. United Mine Workers of America, 25 N. J. Super. 514, 96 A. 2d. 696; and Simmons v. Retail Clarks Union Local 770, 14 Labor Cases 73, 335.

Counsel for appellants, with respect to the third specification of error urged, concedes in brief that since the trial of this case on the merits the Douglas Public Service and Godchaux Sugars, Inc., cases have been decided adversely to his contention that the state is without right under Louisiana law to enjoin peaceful picketing, but he contends that in so holding we violated a cardinal rule of constitutional construction in that we invalidated the state's anti-injunction statute although such conclusion was unnecessary inasmuch as we found violence occurred during the course of both of these labor controversies.

Counsel is in error in this statement, for we declared in the Douglas Public Service case (approved in the Godchaux case) in clear and unequivocal language that "* * * any act of the legislature, whether procedural or substantive, that infringes or trenches upon the constitutional prerogatives of the courts, cannot stand;" consequently, that the "provisions of the so-called anti-injunction act that seek to limit the jurisdiction of the district courts of this state in granting immediate relief, if that is necessary for the protection of rights and property, are illegal and ineffective." It necessarily follows that the doors of the courts of this state cannot be closed to the plaintiff here upon the showing made that irreparable injury

being suffered by it as a consequence of the unlawful activities of the defendants.

The final contention—that the restraint of the picketing in this case is an infringement of the freedom of speech guarantees of the Federal and state constitutions—is also untenable inasmuch as we have found as a fact that the picketing here engaged in is for an unlawful objective. Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985; International Brotherhood of Teamsters v. Hanke, 339 U. S. 470, 70 S. Ct. 773, 94 L. Ed. 995; Building Service Employers International Union v. Gazzam, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045; Richman Brothers Co. v. Amalgamated Clothing Workers, 116 N. E. 2d 60, affirmed by the United States Supreme Court on April 4, 1955; W. E. Anderson Sons Co. v. Local Union No. 331, 156 Ohio St. 541, 104 N. E. 2d. 22; as well as Cordey China Co. v. United Mine Workers of America, 95 A. 2d. 696, and the authorities therein cited.

In disposing of this issue adversely to the contention of the defendants in the recent decisions in Godchaux Sugars, Inc. (supra), we observed:

"It is true that the United States Supreme Court has likened picketing to speech, but this sweeping analogy as first enunciated in Thornhill v. Alabama, 310 U. S. 88 has since been greatly refined and restricted. In Hughes v. Superior Court of California, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 984, the United States Supreme Court * * * said: '"The domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states", * * * no doubt includes liberty of thought and appropriate

means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing "is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated." * * * Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influence, and it produces consequences different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word. * * * However general or loose the language of opinions, the specific situations have controlled decisions. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives ground for its disallowance. * * * "a state is not required to tolerate in all places and all circumstances even peaceful picketing. * * *."

Furthermore, the right to speak freely, as guaranteed by the Constitution is the right to speak for one's self or as the duly authorized agent of another.

For the reasons assigned, the judgments appealed from are affirmed, at the cost of the appellants.

APPENDIX "A"

Original Dissenting Opinion in the Supreme Court of Louisiana

Nos. 41797 and 41983

ARKANSAS OAK FLOORING COMPANY

versus

UNITED MINE WORKERS OF AMERICA ET AL

HAWTHORNE, J., Dissenting in Part.

It is my view that the exception to the citation filed in behalf of the United Mine Workers of America, District 50, is well founded, and that the majority is in error in affirming the judgment of the lower court which issued an injunction against the association as such.

United Mine Workers of America, District 50, is an unincorporated labor union or voluntary association. It was named as one of the defendants in this suit and cited only through James L. Ledbetter, one of its members. Being an unincorporated association, it cannot be sued under the existing laws of this state because it has no legal existence distinct from that of its members.*

Article 446 of the Civil Code provides that "Corporations unauthorized by law or by an act of the Legislature, enjoy no public character, and cannot appear in a court of justice, but in the individual name of all the members who compose it, and not a political body; although these corporations may acquire and possess es-

(*) Except of course as provided in R. S. 13:3471.

tates, and have common interests as well as other private societies."

In State ex rel Doane v. General Longshore Workers, 61 So. 2d 747, a suit for mandamus against an unincorporated association, the Court of Appeal for the Parish of Orleans in a well reasoned opinion correctly held that such an association may not, in the absence of statute, sue or be sued in its society or company name. The majority opinion in the instant case cites and quotes Act 170 of 1918, R. S. 13:3471 (22), and concludes that this statute authorizes the instant suit. This conclusion is incorrect because this is not an action or suit on an "obligation incurred for the benefit" of the association. Plaintiff here is seeking an injunction against peaceful picketing, and consequently the statute has no application.

In State ex rel Doane v. General Longshore Workers, supra, the Court of Appeal gave good and valid reasons in support of its decision that the statute was not applicable in that case. The reasons given and the authorities cited in the Doane case clearly show that the statute is equally inapplicable to the instant case.

In the case now under consideration the majority opinion relies on certain dicta in the case of Godchaux Sugars, Inc. v. Chaisson et al., No. 41569 on our docket, not yet reported, in support of the proposition that an unincorporated group need not be individually cited to be subject to restraint by injunction. In the Godchaux case the union or voluntary association was not sued in its association name, as is the defendant in the instant case, and in fact was not even a party to the suit. Conse-

quently the Godchaux case is not authority on the citation issue in the instant case.

As I pointed out in my dissenting opinion in Douglas Public Service Corp. et al. v. Gaspard et al., 225 La. 972, 74 So. 2d 182, and in my concurring opinion in Godchaux Sugars, Inc. v. Chaisson et al., supra, I do not agree that the procedural requirements of the "Little Norris-LaGuardia Act" are unconstitutional. In the Douglas and Godchaux cases this court in effect held that the statute was unconstitutional, and that a plaintiff seeking injunctive relief in a labor dispute need not follow the procedural requirements set out in the statute. Some doubt has been expressed by members of the bar as to whether the holding in those cases was limited to the particular facts of each case. The holding in the instant case, however, removes any such doubt. Here the majority is affirming a judgment of the lower court granting an injunction against a labor union for peaceful picketing on a public street, although no acts or threats of intimidation, coercion, violence, fraud, breach of the peace, or trespass were committed. This injunction is issued in the teeth of R. S. 23:841 which provides:

"No court shall issue any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

"* * *

"(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising,

speaking, patrolling any public street or any place where persons may lawfully be, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof * * *"

Consequently the entire act is now as dead as a salted mackerel, made so by judicial proclamation.

However, the holding of the majority on R. S. 23:841 is now the law applicable to cases of this kind, and therefore, for the reasons given in my concurring opinion in the Godchaux case, supra, I am not dissenting on this ground. Nevertheless I am dissenting on the matter of citation which I discussed above.

APPENDIX "A"

Denial of Rehearing by Supreme Court of Louisiana

UNITED STATES OF AMERICA
STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA
New Orleans, Tuesday, May 31, 1955

Court was duly opened, pursuant to adjournment. Present, Their Honors: John B. Fournet, Chief Justice, Amos Lee Pontier, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, Harold A. Moise, and James D. Simon, Associate Justices.

ACTION BY THE COURT UPON APPLICATIONS FOR REHEARING

Rehearing was refused in the following case:

41,797) Arkansas Oak Flooring Co. v. United Mine
41,983) Workers

I, V. J. Courville, Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this court.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the court aforesaid, at the City of New Orleans, this 6th day of June, A. D., 1955.

/s/ V. J. Courville
Clerk, Supreme Court of Louisiana

(Page 25, Proceedings in Supreme Court of Louisiana)

APPENDIX "A"

Opinion and Judgment Granting a Preliminary Injunction in Trial Court

JUDGMENT

DATED MARCH 25, 1954

FILED MARCH 25, 1954

BEHALF OF PLAINTIFF

NO. 43,739

Arkansas Oak Flooring Company	:	Ninth Judicial District Court
v.	:	Parish of Rapides
United Mine Workers of America, et al.	:	State of Louisiana

This cause having come on for trial on the rule for a preliminary injunction, and trial being regularly had, and the court being of the opinion that the plaintiff is entitled to the relief prayed for, because, among other things,

it will suffer irreparable loss and damage unless a preliminary injunction is granted, for other reasons orally assigned.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a preliminary injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about plaintiff's property or approaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana; said preliminary injunction to issue upon the plaintiff furnishing bond with good and solvent surety and conditioned as the law requires, in the sum of $5,000.00.

Judgment rendered in open court on March 15, 1954, and read and signed in open court on this 25th day of March, A. D. 1954.

Allen V. Hundley
Judge

APPENDIX "A"

Opinion and Judgment Granting Permanent Injunction in Trial Court

Judgment

Dated June 24, 1954,
Filed June 24, 1954,
Behalf of Plaintiff

NO. 43,739

Arkansas Oak Flooring Company	Ninth Judicial District Court
versus	Parish of Rapides
United Mine Workers of America, et al.	State of Louisiana

******

This cause having come on for trial on the merits, trial being regularly had and the court being of the opinion that the plaintiff is entitled to the relief prayed for, for reasons orally assigned,

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that a permanent injunction issue herein enjoining and prohibiting the United Mine Workers of America, its officers, members and employees, and the other defendants herein, James Ledbetter, Richard Vidrine, Lewis Dunn, Foster Joseph, Leonard Fuller, David Fox, Henry Fowler, Will Sullivan, Mack Kelley, Eddie Goff, Will Cobb and John Doggins, and any and all other persons acting for or on behalf of said defendants, from picketing on, near or about plaintiff's property or ap-

proaches thereto just off Texas Avenue in the City of Alexandria, Rapides Parish, Louisiana.

Judgment rendered in open court on this the 24th day of June, A. D. 1954.

/s/ Allen V. Hundley
J U D G E

FILED IN OPEN COURT
June 24, 1954
Mabel S. Tannehill
Deputy Clerk of Court

APPENDIX "A"

Order of Supreme Court of Louisiana Consolidating Cases No. 41797 and 41983

Order

CONSIDERING the above and foregoing Motion

IT IS HEREBY ORDERED that the appeals in this case No. 41797 and No. 41983 be consolidated on the docket of this Court for the purpose of presentation and argument.

New Orleans, Louisiana, August 6, 1954.

/s/ Joe B. Hamiter
JUSTICE

CERTIFICATE

I certify that a copy of this motion has been served on Stafford and Pitts, Counsel for Appellee, Alexandria, Louisiana.

/s/ James I. McCain
James I. McCain

A TRUE COPY:
CLERK'S OFFICE, NEW ORLEANS, June 13th, 1955.

/s/ V. J. Courville
Clerk Supreme Court of Louisiana

(Page 24, Proceedings in Supreme Court of Louisiana)

APPENDIX "B"

U.S.C.A. United States Constitution, Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S.C.A. United States Constitution, Amendment XIV, Section 1: (Excerpt)

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX "B"

Labor Management Relations Act of 1947

Section 1, Last Paragraph:

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 29 U. S. C., Section 151.

Section 7:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title. 29 U. S. C., Section 157.

APPENDIX "B"

Labor Management Relations Act of 1947—(Continued)

Section 8 (a) (3):

(a) It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this subsection as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as pro-

vided in section 159 (a) of this title, in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 159 (f), (g), (h) of this title, and (ii) unless following an election held as provided in section 159 (e) of this title within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: *Provided further*, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 29 U. S. C., Section 158 (a) (3).

APPENDIX "B"

Labor Management Relations Act of 1947—(Continued)

Section 8 (a) (5):

(a) It shall be un unfair labor practice for an employer—

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of

section 159 (a) of this title., 29 U. S. C., Section 158 (a) (5).

Section 8 (b) (2):

(b) It shall be an unfair labor practice for a labor organization or its agents—

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this Section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership. 29 U. S. C., Section 158 (b) (2).

Section 9 (f) (g) and (h):

(f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing—

(1) the name of such labor organization and the address of its principal place of business;

(2) the names, titles, and compensation and allowances of its three principal officers and of any of its

other officers or agents whose aggregate compensation and allowances for the preceding year exceeded $5,000.00 and the amount of the compensation and allowances paid to each such officer or agent during such year;

(3) the manner in which the officers and agents referred to in clause (2) were elected, appointed, or otherwise selected;

(4) the initiation fee or fees which new members are required to pay on becoming members of such labor organization;

(5) the regular dues or fees which members are required to pay in order to remain members in good standing of such labor organization;

(6) a detailed statement of, or reference to provisions of its constitution and bylaws showing the procedure followed with respect to (a) qualification for or restrictions on membership, (b) election of officers and stewards, (c) calling of regular and special meetings, (d) levying of assessments, (e) imposition of fines, (f) authorization for bargaining demands, (g) ratification of contract terms, (h) authorization for strikes, (i) authorization for disbursement of union funds, (j) audit of union financial transactions, (k) participation in insurance or other benefit plans, and (l) expulsion of members and the grounds therefor;

and (B) can show that prior thereto it has—

(1) filed with the Secretary of Labor, in such form as the Secretary may prescribe, a report showing all of (a) its receipts of any kind and the sources of such receipts, (b) its total assets and liabilities as of the end

of its last fiscal year, (c) the disbursements made by it during such fiscal year, including the purposes for which made; and

(2) furnished to all of the members of such labor organization copies of the financial report required by paragraph (1) hereof to be filed with the Secretary of Labor. 29 U. S. C., Section 159 (f).

(g) It shall be the obligation of all labor organizations to file annually with the Secretary of Labor, in such form as the Secretary of Labor may prescribe, reports bringing up to date the information required to be supplied in the initial filing by subsection (f) (A) of this section, and to file with the Secretary of Labor and furnish to its members annually financial reports in the form and manner prescribed in subsection (f) (B). No labor organization shall be eligible for certification under this section as the representative of any employees, and no complaint shall issue under section 160 of this title with respect to a charge filed by a labor organization unless it can show that it and any national or international labor organization of which it is an affiliate or constituent unit has complied with its obligation under this subsection. 29 U.S.C., Secton 159 (g).

(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month

period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022, and 1023 of title 18 shall be applicable in respect to such affidavits. 29 U. S. C., Section 159 (h).

Section 13:

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right. 29 U. S. C., Section 163.